THE HON'BLE SRI JUSTICE C.V. RAMULU

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W.P.No.10850 of 1999

Dated: 28-07-2005

Between:

N.Kanakaiah, S/o. Narsaiah (died)

And others.

Petitioners…

And

Andhra Pradesh State Co.operative Marketing

Federation Limited, represented by its

General Manager (G), Hyderabad,
Parisram Bhavan, Basheerbagh, Hyderabad and another.

Respondents

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ORDER:

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This writ petition is filed seeking a Writ of Mandamus declaring the proceedings Rc.No.EST/16/DISC/KMM/96, dated

20-10-1997 of the 2nd respondent-Managing Director, A.P.Markfed as confirmed by the 1st respondent-A.P. State Cooperative Marketing Federation Limited in its proceedings Rc.No.ED/770/97 dated 11-05-1998 as arbitrary, illegal and violative of principles of natural justice and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that he was initially appointed as a Helper in the year 1975 and got promoted as Junior Field Supervisor-cum-in-charge of Retail Sales Depot (for short 'Supervisor') in the year 1976. While working as Supervisor at Nelakondapally, Khammam District, he was issued with a charge memo dated 25-04-1997 alleging that he committed fraud by collecting an amount of Rs.20,000/- from PACS, Surdepally unauthorisedly, against the dues payable to the District Office, Khammam, by giving hand receipt and remitted the same on
30-03-1996, fraudulently showing against the misappropriated amount of the retail sale depot. The petitioner offered an explanation stating that he had collected certain amount under the circumstances explained by him and he stated that it being the first mistake on his part, he may be pardoned. However, a detailed enquiry was conducted and on the basis of the enquiry report,
a show cause notice dated 25-04-1997 was issued and after receiving the explanation offered by the petitioner, he was dismissed from the service on 20-10-1997. Aggrieved by the same he filed an appeal before the competent authority, which was rejected on 11-05-1998. Hence, this writ petition.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner.

Learned counsel appearing for the petitioner strenuously contended that firstly, the whole enquiry was based on the purported admission made by the petitioner and the same was relied upon by the disciplinary authority and passed dismissal order. Secondly, the appellate authority has also not properly appreciated the facts and circumstances of the case and came to an erroneous conclusion of dismissing the appeal.
The respondents failed to see that the charges levelled against the petitioner are vague. The charges are purported to have been proved only on the basis of the admission made by the petitioner and except this there is no other material was made available for appreciation of the disciplinary authority or the appellate authority. Simply because of the petitioner made a confession that itself does not mean that he can be held guilty without conducting a detailed enquiry. Further assuming that the charges are proved, the punishment of dismissal from service is disproportionate to that of the alleged misconduct.

Learned counsel appearing for the respondents strenuously contended that the petitioner misappropriated the finances of the markfed and there cannot be any other lesser punishment could have been imposed by the disciplinary authority as confirmed by the appellate authority, in view of the nature of the charges proved against him. The proved misappropriation may be temporary,
but the petitioner does not deserve any lesser punishment than that of the dismissal from the service.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

At the outset, I am of the opinion that except the purported confession said to have been made by the petitioner, there is no recorded evidence discussed by any of the authority including the disciplinary authority as to what exactly the misconduct committed by him. Since the petitioner confessed to some extent, it cannot be said that this Court goes into the aspect whether there was any sufficient evidence to prove the charges against him.
In substance charges are that petitioner having collected certain amounts failed to remit the same immediately. Therefore he committed temporary misappropriation. It may be noticed that the entire amount, even before the charge sheet was issued, were collected by the respondents. The findings of the disciplinary authority would reveal as under:

> "The charged officer submitted his explanation to the show-cause-notice in the reference 6th cited. The charged officer repeated his explanation given to the charges once again in his reply to the show-cause-notice. During the enquiry the charged officer himself admitted on the misconduct committed by him. However, it is found that there is no fresh evidence adduced or new averments made by the charged officer, nor has he brought out any new facts for consideration. All the facts given in his explanation to the show-cause-notice have been taken into account while holding charges proved."

A bare look into the Telugu version of the explanation submitted by the petitioner, to the charge sheet, it is true, that the petitioner has confessed to some extent, which reads as under:

> "As on 31-03-1996, I was due an amount of Rs.21,956-75 ps., to the Markfed, but the authorities issued me a show cause notice that I was due an amount of Rs.41,956-75Np. Now I am enclosed herewith a Challan which I was paid in the S.B.H. Khammam on 31-03-1996. You are requested to go through it. From the last 2 years, I was borrowed some amount from the agriculturists on hand loan basis for my domestic purposes. Due to my meger salary, I am not able to pay their loans and interest also, hence they approached me and harassing me for their amounts. At this juncture, they received the Fertilizers in the place of my loan amount, and also I am not getting my increment amounts of Rs.25,000/- and due to my meger salary I am facing so many financial problems. At this juncture, I approached the Markfed Employee Credit Society, unfortunately due to lack of seniority, the application also rejected. As on 21 years service with Markfed, I got so many losses in my life. From 11-04-1996 onwards my position is very bad condition. At this juncture I am requesting your goodselves, due to this financial problems, I have to lookafter my 6 family members inclusive of my unmarried sister, the usage of Departmental funds is neither wantan or willfull but the above said circumstances, I utilized the funds. Hence I am requesting your authorities to please grant me the increments amount and adjust the same to the shortage amounts and do the justice to me and consider this case under humanitarian grounds and drop further action."

It is unfortunate that during the pendency of the writ petition the petitioner passed away and his legal heirs, petitioners 2 to 5 wife and children, are brought on record.

In the overall facts and circumstances of the case and also in view of the fact that the petitioner had put in 21 years of unblemished service, I am of the opinion that the dismissal from services is shockingly disproportionate to that of the misconduct proved against the petitioner. The impugned proceedings are liable to

be set aside. Since the petitioner died and the misconduct related for the year 1996, I am of the opinion that this litigation can be given a quietus at this stage itself by modifying the punishment.

In the result, the writ petitioner shall be treated as having retired compulsorily from the service with effect from 20-10-1997 and the petitioners 2 to 5 shall be paid with all benefits that may accrue in view of the compulsory retirement, within a period of three months from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V. RAMULU, J

Dated: 28-07-2005

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